

COUNTY OF PENDLETON, KENTUCKY

ORDINANCE NO. 1010.0

AN ORDINANCE DESIGNATING AS UNLAWFUL AND A PUBLIC NUISANCE AND AN ENVIRONMENTAL NUISANCE THE ACCUMULATION OF FILTH, TRASH, MOTOR VEHICLES AND/OR PARTS, DILAPIDATED DWELLINGS, OR OTHER SIMILAR ORGANIC OR NON-ORGANIC MATERIALS WITHIN THE COUNTY OF PENDLETON, KENTUCKY; PROVIDING FOR NOTIFICATION TO THE OWNER AND/OR OCCUPANT OF THE SITE THEREOF OF THEIR DUTY TO REMEDY SAID PUBLIC AND/OR ENVIRONMENTAL NUISANCE; PROVIDING FOR THE ACCRUAL OF LIENS FOR THE COST OF SUCH ABATEMENT IN FAVOR OF THE COUNTY OF PENDLETON, KENTUCKY AFTER FAILURE TO COMPLY WITH NOTIFICATION; AND, PROVIDING FOR A FINE FOR VIOLATION THEREOF

BE IT ORDAINED BY THE FISCAL COURT, COUNTY OF PENDLETON, as follows:

Section 1. Definitions.

For the purpose of this ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Motor Vehicles". Any agency for the transportation of persons or property which is or was designed to be propelled otherwise than by muscular power.

"Approved Fence". A barrier constructed of: earthen (minimum 2 ½ to 1 slope), rock, concrete, evergreen vegetation, painted wood, or painted metal, of such consistency and height that a person of six feet in height and having 20/20 vision cannot view the content therein while standing on the surface of any public passway.

"Automobile or Motor Vehicle Parts". Any portion or parts of any motor vehicle as detached from the vehicle as a whole.

"Business". An economic activity involving the buying, selling or trading of goods or services, as evidenced by a Federal Tax Identification or social security number and the filing of a tangible or intangible State tax form and by inclusion in the Pendleton County tax rolls as such business.

"Dwelling". Any part of any structure or its premises used or intended to be used as a place of residence, habitation, or for sleeping by any person.

"Inoperative Condition". Refers to a motor vehicle which cannot be operated on a public highway under its own power due to defective, inoperative, or missing

parts, and which has remained in such condition for a period of not less than ninety (90) consecutive days, or a motor vehicle which does not have a valid license plate and/or registration as required by state law.

"Public Nuisance". Any act, thing, occupation, condition or use of property, which shall continue for such a length of time as to:

(1) Substantially injure, endanger, or detract from the comfort or health, of the public;

(2) Unlawfully and substantially interfere with, obstruct, or tend to obstruct or render dangerous for passage any public roadway, street, alley, highway, sidewalk, stream, ditch or drain; or

(3) Essentially tend to depreciate the value of property of others.

"Salvage Materials or Vehicles". Damaged, discarded, or dismantled material or vehicles which are stored for potential further use.

"Scrap Metal". Pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

"Unfit For Further Use". Description of any material which is in a dangerous condition, has defective or missing parts; or is in such a condition generally as to be unfit for further use as a conveyance on or off a public highway.

"Unfit for Human Habitation". Description of any material which is dangerous or detrimental to life or health due to: want of repair; defects in the drainage, plumbing, lighting, or ventilation systems, or in construction itself; infection with contagious disease; or the existence on the premises of an unsanitary condition likely to cause sickness among occupants of the dwelling or other persons who may come into contact with same.

Section 2. Common Law and Statutory Nuisances.

In addition to what is declared in this ordinance to be a public nuisance, those offenses which are known to the common law and statutes of Kentucky as public nuisances may be treated as such and be proceeded against as is provided in this ordinance, insofar as abatement is concerned, or in accordance with any other provisions of law.

Section 3. Certain Conditions Declared A Nuisance.

It shall be unlawful for the owner, occupant, or person having control or management of any land within Pendleton County to permit a public nuisance to develop thereon, or to suffer the continued existence of any public nuisance which shall have

developed or been created, in whole or in part. The following conditions are declared to be public nuisances:

- (a) Dwellings. Dwellings being used as a residence, determined to be unfit for human habitation as determined by official action or designation of the local health inspector or County building inspector.
- (b) Dangerous buildings adjoining public ways. Any building, house or structure so out of repair and dilapidated that it poses a serious threat of a fire hazard or poses serious threat to the life, limb, or property of persons upon the public streets or public ways adjacent thereto, by the falling thereof or the falling of parts thereof.
- (c) Dangerous trees or stacks adjoining public ways. Any tree, stack or other object standing in such a condition that it poses a serious threat of endangering the life, limb, or property of, or causing hurt, damage, or injury to persons or property upon public streets or public ways adjacent thereto, by the falling thereof or the falling of parts thereof.
- (d) Dilapidated Building. Any building, house or structure which is so out of repair and dilapidated that it poses a serious threat of a fire hazard or which due to lack of adequate maintenance or neglect, endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property.
- (e) Accumulation of rubbish. An accumulation on any premises of filth, refuse, trash, garbage, or other waste material which poses a serious threat of danger to the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger of its catching or communicating fire, its attracting and propagating vermin, rodents, or insects, or its facilitating the blowing of trash onto public or other private property.
- (f) Noxious odor or smoke. Odor, dust, smoke or other matter which unreasonably interferes with the ordinary health and general welfare of other citizens in the vicinity of the source of same; this subsection shall not apply to any such emissions related to business activities which are regulated by State or Federal authorities and when the emissions are within guidelines or limits prescribed by the same.
- (g) Noxious Noise. Noise which unreasonably detracts from the enjoyment by persons of their personal or real property in the vicinity of the source of same; this subsection shall not apply to any noise emissions related to business activities which is regulated by State or Federal authorities and when the noise emission is within guidelines or limits prescribed by the same.

(h) Open wells. Open, uncovered, or insecurely covered cisterns, cellars, wells, vaults and similar openings or cavities situated upon any open or unfenced privately owned property.

(i) Junk; scrap metals; motor vehicles. An unlicensed or unregistered motor vehicle or vehicles in an inoperative condition, motor vehicle or vehicles unfit for further use, automobile parts, junk, or scrap metals that are less than 500 feet from a public passway unless said junk, scrap metal, or motor vehicle or motor vehicles are stored in a structure or behind an approved fence so as to prevent the viewing of said material from the public passway by persons other than the owner.

(j) Existing Businesses Engaging In: Junk, Scrap Metal, Salvage, Material Recycling, Auto Salvage, Motor Vehicle Repair.

- (1) Any junk, auto salvage, salvage, material recycling or scrap metal business which stores junk or scrap metal less than 200 ft. from a public passway unless said junk, salvage material or scrap metal is stored in a structure or behind an approved fence, so as to prevent the viewing of said nuisance by persons other than the owner.
- (2) A motor vehicle repair business which stores inoperative vehicle parts, scrap vehicle parts, or vehicle or vehicles in an inoperative condition (stored for a period of more than 90 days that do not have a valid license) that are less than 200 ft. from a public passway; unless said vehicle or vehicles are stored in a structure or behind an approved fence so as to prevent the viewing of said nuisance by persons other than the owner.

(k) New Businesses Assuming a New Location After Adoption of This Ordinance Engaging In: Junk, Scrap Metal, Salvage, Material Recycling Auto Salvage, Motor Vehicle Repair.

- (1) Any junk, auto salvage, salvage, material recycling or scrap metal business which stores junk or scrap metal meeting either of the following criteria; (a) less than 500 feet from a public passway, or (b) not behind an approved fence or stored in a structure so as to prevent the viewing of said nuisance by persons other than the owner.
- (2) A motor vehicle repair business which stores inoperative vehicle parts, scrap vehicle parts, or vehicle or vehicles in an inoperative condition (stored for a period of more than 90 days that do not have a valid license) that are less than 500 ft. from a public passway, and are not behind an approved fence or stored in a structure so as to prevent the viewing of said nuisance by persons other than the owner.

Section 4. Abatement Procedures.

- (a) It shall be the duty of the Sheriff, the Solid Waste Coordinator, or other responsible officer designated by the fiscal court to serve or cause to be served a notice upon the owner or occupant of any premises on which there is kept or maintained any nuisance in violation of the provisions of this ordinance and to demand the abatement of the nuisance within thirty (30) days unless otherwise stated in this ordinance or unless the nuisance constitutes an immediate danger to the health and well being of the community. Except as otherwise provided by the State or Federal Environmental Protection Agency Statutes or regulations, if such a danger to the health and well being of the community is present, the nuisance shall be abated within twenty-four (24) hours of notice. Notice shall be served upon persons by hand delivery, if possible, and if not by certified mail; if the whereabouts of the persons is unknown and cannot be ascertained in the exercise of reasonable diligence, the enforcing officer shall make an affidavit to that effect, and the service of notice may be made by publication in a newspaper of general circulation for two consecutive issues, and by posting such a notice in a conspicuous place on the premises affected by the notice.
- (b) If the person so served does not abate the nuisance within sixty (60) days, the county may proceed to abate the nuisance, keeping an account of the expense of the abatement, and the expense shall be charged to and paid by the owner or occupant as a joint and several liability.
- (c) Charges for nuisance abatement shall be a lien upon the premises. Whenever a bill for charges remains unpaid for ninety (90) days after it has been rendered, the County Attorney may file with the County Clerk a statement of lien to constitute an encumbrance on the title to the land. This statement shall contain a legal description of the premises, the expenses and costs incurred, the date the nuisance was abated, and a notice that the County claims a lien for this amount. Notice of the lien claim shall also be mailed by certified mail to the Owner or Owners of the property concerning which the nuisance was abated. The lien shall accrue interest at a rate which will be calculated by adding one (1%) percent to the interest rate the county receives on its checking accounts, adjusted on the annual anniversary of the filing of the lien. It may be enforced at any time thereafter as in the nature of a mortgage.
- (d) In the alternative to the abatement procedure described in this section, the Sheriff, Solid Waste Coordinator or other responsible officer designated by the County Judge Executive may issue a written warning concerning abatement of the nuisance. If the person receiving the warning does not abate the nuisance within thirty (30) days, a criminal complaint may be made or a citation may be issued citing the person to appear in the County District Court for a violation of the specified provision involved.

Section 5. Nuisance Created by Others.

For the purpose of this ordinance, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or management of the premises, where the nuisance was created or contributed to by licensees, invitees, guests, or other persons for whose conduct the owner or operator may be considered reasonably responsible.

Section 6. Penalty.

Any person who violates any part of this Ordinance shall be fined not less than fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars; each day that a violation continues after the date of an initial conviction hereunder shall constitute a separate offense.

Section 7. Severability.

The provisions of this ordinance are severable. If any provision, paragraph, sentence, clause, section or part of this ordinance or the application thereof to any particular case is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or repeal any of the remaining provisions, paragraphs, sentences, clauses, sections or parts of this ordinance, it being the legislative intent of this body to ordain and enact such provision, paragraph, sentence, clause, section, or part hereof separately and independently of such other provision.

Section 8. This ordinance supersedes Ordinance No. 820.1 and repeals that ordinance and any other ordinance provision to the extent that the same may be in conflict with this ordinance.

Section 9. This ordinance shall take effect upon its passage and publication according to law.

Section 10. Reading, notice, and publication of this ordinance shall be by summary.

Enacted this 1 day of February, 2005.

Henry W. Bertram
HENRY W. BERTRAM
Pendleton County Judge-Executive

ATTEST:

Rita M. Spencer, Clerk
RITA SPENCER By: [Signature]
Pendleton County Clerk

First reading: JANUARY 11, 2005
Second reading: JANUARY 25, 2005
Passage: JANUARY 25, 2005
Publication: FEBRUARY 1, 2005